

Congress of the United States
Washington, DC 20515

May 24, 2022

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20200

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
7500 Security Blvd.
Baltimore, MD 21244

Dear Secretary Becerra, Secretary Yellen, and Administrator Brooks-LaSure:

We write to express our serious concerns regarding Colorado's Section 1332 State Innovation Waiver Amendment Request ("Waiver Amendment Request") to implement the Colorado Option. This is a precedent-setting, first-in-time waiver, expressly asking the Department of Health and Human Services (HHS) to use federal pass-through funding under the Patient Protection and Affordable Care Act (ACA) to offer health care coverage to illegal aliens. We strenuously object to this waiver and request that HHS deny Colorado's Waiver Amendment Request. While the Trump Administration used Section 1332 waivers to great effect while he was president, removing regressive ACA-imposed restrictions on state innovation and lowering health care premiums for millions of Americans, the government of Colorado is manipulating this process in order to violate Federal law and relegate Coloradans to second tier status with respect to health care accessibility.

Colorado's Waiver Amendment Request is a direct attempt to undermine a critical safeguard written into the ACA to protect Americans against the bill's excesses: the prohibition against prioritizing illegal aliens over American taxpayers. This prohibition charges the federal government with denying federal tax dollars from funding health care for illegal aliens. ACA coverage has always hinged on citizenship or lawful presence in the United States.¹ The Federal health insurance exchange website is clear on this issue, it reads: "Undocumented immigrants aren't eligible to buy Marketplace health coverage, or for premium tax credits and other savings on Marketplace plans."² Further, there is legislation pending before the House and Senate designed to wipe out ACA provisions prohibiting health coverage and federal subsidies for illegal aliens.³

¹ 2010. Mar 23, The Patient Protection and Affordable Car Act (PPACA), Pub. L. No. 111-148, 124 *Stat* 119 (<https://www.govinfo.gov/content/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf>).

² <https://www.healthcare.gov/immigrants/coverage/>

³ <https://www.booker.senate.gov/news/press/booker-jayapal-introduce-urgent-legislation-to-expand-health-care-to-immigrants> ("...[t]he legislation removes the current restrictions that prevent undocumented immigrants from purchasing care through the Affordable Care Act marketplace while ensuring these individuals are able to obtain

Colorado's Waiver Amendment Request is clear about the use of federal funds to cover health care costs for illegal aliens. The opening paragraph contains the following statement: "Pass-through savings derived from the waiver will support State-based subsidies for health insurance affordability supporting Coloradans that may find out-of-pocket costs unaffordable or that are not eligible for premium tax credits under the ACA, including those Coloradans that are not eligible due to immigration and documentation status, or lack thereof."⁴ The waiver also reads, "These savings would be shared with the State in the form of pass-through payments to support a first-in-the-nation subsidy program supporting Coloradans that are not eligible for premium tax credits...persons without documentation or otherwise excluded from federal assistance."⁵ The Waiver Amendment Request describes the Colorado Option as follows: "In plan year 2023, a new subsidy program will be offered to Coloradans not eligible for federal subsidies, including Coloradans without a documented immigration status."⁶

The obligations the federal government has towards American citizens and those who arrive here by crossing the border illegally are entirely distinct. Colorado's Waiver Amendment Request encourages illegal immigration, incentivizing millions to violate the law and pour across our borders. It is also fiscally irresponsible and financially untenable. In a country of approximately 330 million people, it is indefensible for the federal government to proceed down a path that could lead to a policy that forces tens of millions of federal taxpayers to subsidize lawbreakers against their will. HHS has a statutory obligation to prevent taxpayer resources from being used to finance health care for illegal aliens, and federal officials must be vigilant in confronting any such attempt to do so.

Sincerely,



Ken Buck
Member of Congress



Doug Lamborn
Member of Congress



Lauren Boebert
Member of Congress

premium tax credits and cost-sharing reductions."); *see also* http://jayapal.house.gov/wp-content/uploads/2021/05/HEAL-Act_Jayapal.pdf

⁴ Colorado Section 1332 Innovation Waiver, Waiver Amendment Request, Colorado Option, at pg. 3 <https://drive.google.com/file/d/1SUy-iNz3i7IIRTPTqy2OJgNYH1oyN5mX/vie>

⁵ Colorado Section 1332 Innovation Waiver, Waiver Amendment Request, Colorado Option, at pg. 4 <https://drive.google.com/file/d/1SUy-iNz3i7IIRTPTqy2OJgNYH1oyN5mX/vie>

⁶ Colorado Section 1332 Innovation Waiver, Waiver Amendment Request, Colorado Option, <https://drive.google.com/file/d/1SUy-iNz3i7IIRTPTqy2OJgNYH1oyN5mX/vie>, at pg.6